

**City of New Castle
Ethics Committee Meeting
Town Hall 201 Delaware Street
Wednesday, November 29, 2017
7:00 p.m.**

Roll Call

Councilperson Michael Quaranta, Chair

Judie Baldini

Katie McCormick

Dan Bungy

Jerry Rousseau

Daniel Losco, City Solicitor

Members Absent:

Rev. Aaron Moore, City Resident

Meeting was called to order at 7:00 p.m.

Quorum was declared, Mr. Quaranta

Date for next meeting: Thursday, December 14th 7:00 p.m.

Mr. Quaranta asked each member to identify their priorities, and to comment on the following:

- Should City Council address the topic of a Code of Ethics/Conduct, or is the State law and policy is sufficient?
- If the answer is yes, then the Task Force would report to Council that they had reviewed the State Code and other municipalities' codes and concluded that the State Code is sufficient, and policies in place are satisfactory.
- If a majority of the Task Force feel recommendations should be made, then the Task Force will compile a list, and vote on each recommendation made.

Mrs. Baldini asked if recommendations were made, would it be appropriate to make very specific recommendations, or present a general list.

Mr. Quaranta said if the task force did vote to make recommendations to Council he felt they should be as specific and clear as possible. That way Council will not have to redo the work that the Task Force has already done.

Mr. Rousseau noted that the State recommends that each municipality have its own Code of Conduct, he asked if that is because they don't want to deal with conduct issues.

Mr. Losco said that recommendation came from the State, but if a municipality adopts their own code it must be at least as stringent as the State Code. Appointed officials and employees can all be disciplined but not elected. It would be hard to improve on the State Code with anything that

was truly enforceable. If the Task Force wanted to make changes Mr. Losco suggested looking through some of the other municipal codes. There are aspirational changes that can be implemented, but still elected officials cannot be disciplined beyond what is currently allowed.

Mrs. Baldini said the City could go beyond the State Code by adding the conduct piece. She felt something should be presented so that there is at least the perception the City is attempting to set standards.

Ms. McCormick agreed, she said even if the Code adopted by the City is completely consistent with the State Code, articulating the City's expectation of their elected officials and people running the town will have real benefit. If Council adopts a code that states elected officials and employees are expected to practice civility and decorum, even if there is little recourse if they do not, at least the expectation has been set forth.

Mr. Bungy said he has talked to many people in town, and they expect the Task Force to do something. He said free speech is protected, but noting the current trends in the country, the City needs to have policies in place when inappropriate behavior is exhibited.

Mr. Losco stated that the creation of the Task Force almost necessitates the conclusion that has been expressed. If the Task Force came back with no suggestions it might be looked on as a failure to seize an opportunity. He said he is hesitant to adopt ordinances without repercussions for violations. But he has no problem with the aspirational code of conduct, outlining what type of conduct is expected.

Mr. Quaranta stated that whatever the outcome of the Task Force, there will need to be extensive communication with the public regarding the current State Code, and whatever recommendations are made, if any.

Mr. Quaranta outlined his recommendations.

- Create a citizens commission
 - Nine member Commission of City residents that would meet on an as need basis,
 - They would be trained on the State Code and local code, if any.
 - The Commission would have a Chair and standard rules of procedure.
 - Authority: If a topic were raised and brought to the Ethics Commission the issue would be discussed and debated, the issue could be dismissed by the Commission or a recommendation could be made to Council take action.

Mr. Losco stated that this Ethics Commission would basically be running a trial. For the accused to have due process they would have to subpoena witnesses, have rules of procedure, rules of evidence, the opportunity of cross examine, and to have council present, that could be daunting to a citizen panel. Mr. Losco asked if this would slow down procedures already in place for City employees and appointees.

Ms. McCormick said she felt it would be beneficial to include City employees. It would give citizens the opportunity to lodge complaints before an objective Board.

Discussion of City policies ensued regarding employees and appointees and how including them in this process would work with the Code of Ethics or Code of Conduct.

Mr. Quaranta said he would like to see the commission hear and make recommendations on what will be sensitive issues. That adds a level of trust and fairness to any disciplinary action that may or may not be taken. He said he felt that the jurisdiction of the Commission should be limited to the Mayor, Council and appointed positions of Board and Commissions. The State law will guide the Council on decisions it might have to make.

Mr. Losco asked if the Task Force envisions the City Code as the State Code, with the addition of a set of aspirational rules on conduct of elected officials, along with the creation of the Commission. Excluding collective bargaining and police matters, and stating that nothing the Ethics Committee does usurps the authority City Administration from disciplining or terminating an employee. The findings of the Ethics Commission are not binding on any tribunal.

Mr. Quaranta stated that is a good outline of what people are asking for, what might be considered weaknesses and gaps in policy.

Ms. McCormick noted that the Task Force had discussed civil fines at other meetings, and asked if fines would be part of the Commission's recommendations.

Mr. Losco said the Commission could recommend a fine, and Council could impose the fine. It could be paid or appealed.

Discussion of the litigation process and possible conflicts.

Mr. Quaranta asked members to summarize their thoughts on the implementation of an Ethics Commission.

Mr. Rousseau said he feels the City needs a commission, he said it sounds like the Task Force is leaning toward a commission with limited scope. He added a commission like this would give the public a group that works for them. He asked who appoints this commission. Mr. Losco suggested one appointee per Councilperson and the remaining be Mayoral appointments.

Mr. Quaranta also suggested that you could identify what kind of background you would like on the Commission. As an example, the Historic Area Commission has to have a member of the Planning Commission, a member of the Historical Society, and an architect.

Ms. McCormick said she felt there should be a Commission; she felt 9 might be a little high, but some odd number. She felt City residents would be preferred, but someone outside who might have been on Council might be beneficial. She felt being conversant in the State Code and local code, if adopted, should be a minimal requirement, and an annual meeting to make sure the Commission is prepared to hear complaints as needed. She recommended a local code, and a chair as well as rules of procedure for the Commission. As to the level of authority, Ms. McCormick said she felt it would be beneficial for the Code to expand to employees that are already covered by other levels of discipline.

Mrs. Baldini said the training aspect is necessary, and could be offered to other Boards and Commissions as well as elected officials. She said she was more comfortable with limiting the Code to the elected and appointed officials. She felt it would be too extensive to include all the City employees. She said she also felt that 9 people might be too many, and she would like to make the appointments as non-political as possible. The statement from committee could just include an aspirational document. She noted that other codes do have sanctions for elected officials, such as not being allowed to sit on committees. Mrs. Baldini added she felt there were gaps that could be addressed, such as when a Councilperson should recuses themselves from a vote. She would like to see a statement of purpose and recommendation go to Council and a Code of Conduct backed up by a process.

Mr. Bungy (?) agreed that Council should address this issue and there should be a Commission, however 9 members may be too many. If there is a Commission they should have a limited scope, and they should definitely have training. He felt that they should make recommendations to Council, and have legal input.

Mr. Losco said he likes the idea of having aspirational goals, but hates that it has no teeth. He said to have a law that is not subject to enforcement can put the City in a bad situation. He pointed out that if the City adopts a code it must be at least as stringent as the State law, which includes all employees, so that might be a problem to only include elected and appointed officials. Any proceedings concerning employees would be done in executive session. He added adopting the State Code, adding aspirational goals, creating an Ethics Commission, establishing rules and procedures, making clear that the Commission cannot usurp administrative authority, can give advisory opinions, and can dismiss complaints, and have training all these things can be done.

Mr. Quaranta added that the Commission would make recommendations to Council, but noted that the Task Force had not discussed the range of recommendations and discipline. The first would be dismissal of the complaint, to censure, or removal from a board or Committee in the case of appointed officials.

Ms. McCormick pointed to Delaware City's Code, saying if the Commission is limited to elected officials there is very little that can be done to remedy misconduct, but there is a benefit to voicing expectations and having a public forum.

Mr. Rousseau said that the majority of the Task Force seems to feel that having a commission is a valuable exercise.

Mr. Quaranta asked for a vote of various items to include in the recommendation to City Council.

Proposed Code:

- Do we want to have a commission
 - 4 Yes/ Losco No
- Adopting the State Code:
 - Yes, either as written, or incorporated into our Code. KM Abstain

- Adding aspirational goals as found in other codes.
 - Yes
- Limiting Scope to elected and appointed officials only – Yes, No KM & DL
 - Rules could apply to all employees so it is as stringent as the State, but add provision that nothing in the code usurps the authority of City Administration to discipline or terminate any employee; employee discipline is separate from ethical enforcement.
 - Ms. McCormick suggested the Code could be written as more stringent for certain categories of employees.
- 7 members, you can stipulate certain backgrounds. Mayor & Council make appointments, terms staggered 5 year terms.
- No usurping of City Administration, Police or Union authority regarding discipline. Yes
- Committee can provide advisory opponents. Unanimous
- Committee can dismiss as mute or frivolous or choose not to hear.
- Establish rules of procedure – Unanimous Yes
- Training seminars including recommending changes to the Ethics Code. Unanimous

Mr. Quaranta asked Mr. Losco to take this information and prepare an outline and elaborate the points for the December meeting. He asked members to review the outline and come to the next meeting with amendments changes.

On a motion by Mr. Quaranta and a second by Mr. Rousseau it was decided that Ms. McCormick would make the final presentation to City Council.

On a motion by Mr. Losco and a second by Mrs. Baldini the meeting was adjourned at 8:41p.m.